

November 26, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E06G0449**

ROCKY & RENEE MORGAN
Code Enforcement Appeal

Location: 25270 Southeast 356th Street

Appellant: Rocky & Renee Morgan
represented by **Eric Krening**, Attorney at Law
Herman, Recor, Araki, Kaufman, Simmerly
2100 – 116th Avenue Northeast
Bellevue, Washington 98004
Telephone: (425) 451-1400
Facsimile: (425) 451-1689

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal and allow 60 days for submission of complete clearing/grading permit application
Examiner's Decision:	Grant the appeal (in part), deny the appeal (in part) and allow 60 days for submission of complete clearing/grading permit application

ISSUES/TOPICS ADDRESSED:

Responsibility for clearing/grading by prior owner; preemption of King County clearing and grading permit requirements by state law; application of clearing and grading permit requirements to landscaping projects.

SUMMARY OF DECISION:

The code enforcement Notice and Order is modified, with extension of time granted to accomplish requirements.

EXAMINER PROCEEDINGS:

Hearing opened:	November 20, 2007
Hearing closed:	November 20, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On July 25, 2007, the King County Department of Development and Environmental Services issued a notice of King County Code Violation: Civil Penalty Order: Abatement Order: Notice of Lien: Duty to Notify ("Notice and Order") to Susan Tuttle and Rocky and Renee Morgan. The property subject to the Notice and Order is located at 25270 Southeast 356th Street in unincorporated King County. At the time the order was issued, Susan Tuttle was the owner of the property and Rocky and Renee Morgan were tenants. Rocky and Renee Morgan subsequently purchased the subject property from Susan Tuttle.

The Notice and Order alleged violations of the King County Code, as specifically set forth in the Notice and Order (see Exhibit No. 2a). In summary, the allegations are that the persons cited graded in excess of 100 cubic yards of soil and cleared in excess of 7,000 square feet within a critical area, without a valid grading permit.

2. A timely appeal of the Notice and Order was filed by Rocky and Renee Morgan on August 13, 2007. The Statement of Appeal asserts that all factual allegations are incorrect; that less than 100 cubic yards were graded; that less than 7000 square feet were cleared; that there is no critical area affected; and no violations of the King County Code occurred.

No appeal was filed by Susan Tuttle.

3. Between 2005 and May 25, 2006, substantial clearing and grading occurred on the southeast corner of the subject property within an area of approximately 10,000 to 13,000 square feet. The grading that occurred during that time period moved an estimated 185 cubic yards of dirt. This clearing and grading occurred prior to the occupancy and ownership of the subject property by the appellants, and was done by persons unknown to the appellants.

Beginning in May 2006, the appellant Rocky Morgan began clearing and grading on the property to clean up the area between the house and road (southwest corner of the property) and the southeast corner, where substantial unpermitted clearing and grading had previously occurred. The grading by the appellant in the southeast corner affected much of the area previously graded

and filled. The appellant's activity included the movement of approximately 70 cubic yards of dirt within the southwest and southeast corners of the property.

CONCLUSIONS:

1. The clearing and grading activity on the property from 2005 through 2006 exceeded the limits of exempt activities set forth in KCC 16.82.051 for property that is outside of critical areas and buffers.
2. There is no substantial evidence that the property upon which clearing and grading occurred is within a wetland, stream or critical area buffer. There was no substantial evidence that surface water runoff from the affected area discharged to any stream. However, a sensitive area determination may be made, and the requirements (if any) for erosion control for the clearing and grading on this property will be determined through the grading permit review and approval process.
3. A property owner is responsible for code compliance pursuant to KCC 23.02.010, when the person who caused the violation is not determined or is unable to correct the violation. In the present instance, the person responsible for the violation is neither known nor able to correct it. Only the property owner has authority to apply for the required grading permit and implement its terms and conditions on the subject property.
4. The provisions of KCC Chapter 16.82 are not pre-empted by Chapter 76.09 RCW. RCW Section 76.09.020 (9) defines "forest land". The exclusion of certain "agricultural land" from the definition of forest land has no bearing on the enforcement provisions of KCC Chapter 16.82.
5. The clearing and grading activities on the subject property exceeded "landscaping" of the front yard of the existing home. Although removal of dirt and debris from the front yard of the existing home occurred, the clearing and grading on the site was not limited to that activity.
6. If the appellants take prompt action to correct the violation by applying for a clearing and/or grading permit, providing all information required for the review of the application, and implement the permit, when issued, in accordance with its terms and conditions, the appellants should not be obligated for fines or penalties, as provided by KCC 23.02.130.

DECISION:

The appeal of Rocky and Renee Morgan is **GRANTED IN PART** and **DENIED IN PART**, as follows:

The appeal of the civil fines and penalties imposed by the July 25, 2007 Notice and Order is **GRANTED**.

The appeal of the requirement that the appellants submit a complete grading permit is **DENIED**, subject to modification of the dates for compliance as follows;

1. The appellants shall submit a complete grading permit application and application fee to King County not later than 60 days following the date of this decision, and shall promptly provide King County all information requested to complete review of the application. Upon issuance, the appellants shall proceed diligently (subject to seasonal and weather limitations) with implementation of the permit and compliance with all conditions thereof.

2. If the appellants comply with paragraph "1." Immediately above, the permit application fee shall be the standard application fees, without "doubling".

ORDERED this 26th day of November, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED via certified mail this 26th day of November, 2007, to the following parties:

Eric Krening
Herman, Recor, Araki
2100 - 116th Ave. NE
Bellevue WA 98004

Rocky & Renee Morgan
25270 SE 356th St.
Auburn WA 98092

Susan Tuttle
1055 Division St., #3
Enumclaw WA 98022

TRANSMITTED this 26th day of November, 2007, to the following parties and interested persons of record:

Eric Krening
Herman, Recor, Araki
2100 - 116th Ave. NE
Bellevue WA 98004

Rocky & Renee Morgan
25270 SE 356th St.
Auburn WA 98092

Susan Tuttle
1055 Division St., #3
Enumclaw WA 98022

Deidre Andrus
DDES/LUSD
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
MS OAK-DE-0100

Jo Horvath
DDES/BSD
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
MS-OAK-DE-0100

Holly Sawin
DDES/LUSD
MS OAK-DE-0100

Toya Williams
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 20, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E06G0449.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin representing the Department; Eric Krening, representing the Appellant, and Rocky Morgan.

The following Exhibits were offered and entered into the record:

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|----------------|--|
| Exhibit No. 1 | DDES staff report to the Hearing Examiner for E06G0449 |
| Exhibit No. 2a | Copy of the Supplemental Notice & Order issued July 25, 2007 |
| Exhibit No. 2b | Copy of the Notice & Order issued January 25, 2007 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received August 13, 2007 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Copy of Alan Meyers email sent October 12, 2006 with attached photos of Tuttle Property dated October 3, 2006 |
| Exhibit No. 6 | King County Drainage Investigation Report prepared by Virgil Pacampara dated May 25, 2006 |
| Exhibit No. 7 | 2005 Aerial Photography of Subject Parcel with red markings indicating cleared and graded areas |
| Exhibit No. 8 | January 3, 2007 photos taken by Holly Sawin |
| Exhibit No. 9 | February 7, 2007 photos taken by Holly Sawin |
| Exhibit No. 10 | King County Drainage Investigation Report prepared by Virgil Pacampara dated May 25, 2006 with numbers indicating where/when pictures attached as Exhibits 8 and 9 were taken by Holly Sawin |
| Exhibit No. 11 | Copy of code referring to grading |